



January 29, 2020

Roger Lee
City of Cupertino, Public Works Director
City Hall
10300 Torre Avenue
Cupertino, CA 95014

Re: Negotiation of New Franchise Agreement

Dear Mr. Lee,

On behalf of our employee-owners, Recology Cupertino hereby expresses its interest in negotiating a new 10-year franchise agreement with the City of Cupertino, to commence immediately after the expiration of our current Franchise Agreement on January 31, 2021.

Section 2.2 of the current Franchise Agreement gives the City the option to negotiate a new 10-year agreement with Recology, if the 4 conditions listed in §2.2.1 to 2.2.4 are met. We believe we have satisfied all 4 conditions. We have cooperatively and proactively worked with the City to limit cost adjustment requests (§2.2.3), and to increase diversion, reduce contamination and expand organics services (§2.2.2). By this letter, we are notifying the City by January 31, 2020 of our intent to negotiate a new agreement (§2.2.4).

The remaining condition (§2.2.1) is that, “to the maximum extent possible,” Recology achieve 75% diversion for 2018 based on CalRecycle’s diversion rate equivalent (DRE) formula for the residential and commercial sectors. Though the actual number was 72.1%, we believe the condition was satisfied because we achieved the goal *to the maximum extent possible*. Further, the main reason for not reaching the goal was China’s National Sword policy, which the Franchise Agreement explicitly recognizes as a valid reason for not achieving 75% diversion. Footnote 1 of §2.2.1 states that the 75% goal “is subject to available markets for recyclable materials,” and describes National Sword as “of particular concern” in that regard. In short, while the goal was not met, the condition was.

For the above reasons, we believe the negotiations contemplated by the current Franchise Agreement can proceed if the City wishes. Even if the conditions were not met, we believe the City has the authority under applicable law to undertake such negotiations.

As discussed in our January 16th meeting, if the negotiations appear likely to extend beyond the January 31, 2021 expiration date for the current agreement, we would be amenable to extending the current agreement for an additional 11 months (through December 31, 2021), provided the extension is coupled with a mutually agreed adjustment to Recology’s compensation for those additional months.

We look forward to meeting with the City to begin negotiations. Please do not hesitate to contact me if you need additional information. For ease of reference, the calculation of the 72.1% DRE figure, and the full text of footnote 1 of §2.21, are attached to this letter as Attachment A.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Zirelli', with a stylized, cursive script.

John Zirelli
General Manager
Recology Cupertino

cc: Ursula Syrova, Environmental Programs Manager
Alex Wykoff, Environmental Programs Division
Mario Puccinelli, Recology South Group Manager
Carl Mennie, Recology South Group Controller

Attachment A

1. 2018 CalRecycle Diversion Rate Equivalent (DRE) Calculation

	Target	2018 Annual (Actual)
Population (Pounds/Person/Day)	4.3	3.1
Employment (PPD)	8.1	3.2

Population (Residential Calculation):

$$\text{DRE} = \frac{(1 - (3.1 / 4.3)) \times 100}{2} = (1 - .360) \times 100 = 64\%$$

Employment (Commercial/Multi-Family Calculation):

$$\text{DRE} = \frac{(1 - (3.2 / 8.1)) \times 100}{2} = (1 - .198) \times 100 = 80.2\%$$

Average Cupertino Residential and Commercial/Multi-Family Diversion 2018

$$64\% + 80.2\% / 2 = 72.1\%$$

2. Text of Footnote 1 to Section 2.2.1 of Current Franchise Agreement

“The City’s 75% diversion goal, set in 2010, is subject to available markets for recyclable materials (e.g. mixed paper, old newspaper, plastics, etc.). Of particular concern in Fall 2017 is that China notified the World Trade Organization in July 2017 that by end of 2017 it would ban imports of 24 kinds of solid waste, including unsorted waste paper, waste plastics, most scrap plastics including PET, PVC polyethylene, polystyrene, mixed paper, slag from steelmaking, and waste textiles.”